

Robert A. Spurr

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New York, NY

August 12, 2004

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----x

In Re: PHARMACEUTICAL)

INDUSTRY AVERAGE WHOLESALE) MDL No. 1456

PRICE LITIGATION) CIVIL ACTION NO.

) 01-CV-12257-PBS

-----)

THIS DOCUMENT RELATES TO)

ALL ACTIONS)

-----x

39(b) (6) DEPOSITION OF ROBERT A. SPURR

New York, New York

Thursday, August 12, 2004

9:43 a.m.

30(b) (6) deposition of Ortho-McNeil

Pharmaceutical, by ROBERT A. SPURR, held at
the offices of Patterson, Belknap, Webb &
Tyler LLP, 1133 Avenue of the Americas, New
York, New York, pursuant to Notice, before
Frank J. Bas, a Registered Professional
Reporter and Notary Public of the State of
New York.

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1 A P P E A R A N C E S:

2

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1 A P P E A R A N C E S (CONT'D):

2

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8 RULINGS: (None)

9 MOTIONS: (None)

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1 (Time noted: 9:43 a.m.)

2 (Exhibit Spurr 001 for identification,
3 amended notice of Rule 30(b)(6) deposition.)

4 (Exhibit Spurr 002 for identification,
5 drug list, headed Purchases Made By
6 Plaintiffs Of Drugs Manufactured/Distributed
7 By The Johnson & Johnson Group.)

8 R O B E R T A. S P U R R,

9 stating his home address as 10 Horton Drive,
10 Chester, New Jersey, having been duly sworn
11 by the Notary Public (Frank J. Bas), was
12 examined and testified as follows:

13 EXAMINATION BY

14 MR. MACORETTA:

15 Q. Mr. Spurr, good morning.

16 A. Good morning.

17 Q. We met a minute ago, I'm John
18 Macoreatta, I'm here on behalf of the plaintiffs.
19 Could you start by -- well, where do you work
20 now? Give me your office and address.

21 MR. SCHAU: John, let me just
22 interrupt.

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1 MR. MACORETTA: Sure.

2 MR. SCHAU: I'll just say at the
3 outset I would like to designate it for the
4 moment, the transcript, to be highly
5 confidential pursuant to the protective
6 order.

7 MR. MACORETTA: We have no objection
8 to that.

9 MR. SCHAU: Okay.

10 Q. Go ahead. Where is your office?

11 A. Raritan, New Jersey.

12 Q. What's your home address?

13 A. 10 Horton Drive, Chester, New Jersey.

14 Q. Before we get into the details, into
15 the substance of questions, let me ask you first,
16 have you ever been deposed before?

17 A. Yes.

18 Q. Okay. So you're familiar with the
19 process? I'm going to ask the questions, you're
20 going to answer them, the court reporter is going
21 to take down everything we say, right?

22 A. Yes.

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1 committee to wherever it goes in J&J corporate?

2 A. Ortho-McNeil finance department,
3 under Joe Bondi's guidance, would take that to
4 Christine Poon and to the other financial people
5 in corporate to review.

6 Q. Okay. Is there some policy that
7 tells us this is how price -- we're talking about
8 an initial price, right?

9 A. Initial price, in this case for a
10 line extension, or a new SKU.

11 Q. Or a new product as well, right?

12 A. Yes. But the new product is a bit
13 different.

14 Q. How is it different?

15 A. There's another company within J&J
16 called PGSM. They do our global pricing research
17 and analysis. So prior to a brand being
18 commercialized in the U.S., they also put
19 together market research and pricing
20 recommendations before transferring it to the
21 U.S. commercial team that's ultimately going to
22 market and sell the product here in the U.S.

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1 Q. The U.S. commercial team means OMP or
2 an operating company?

3 A. Another operating. Wherever they
4 assign the product.

5 Q. Okay. And does this same process,
6 meaning cross-functional team to OMP pricing
7 committee to J&J corporate, does that apply to
8 price changes as well?

9 A. Yes.

10 Q. Is there some policy at OMP that
11 would say this is the way things work or the way
12 they flow?

13 A. No.

14 Q. That's just the way you do things?

15 A. That's the way it's been done.

16 Q. The cross-functional team, do they
17 generate some kind of standard report or
18 explanation for why they're going to take this
19 price action?

20 A. Yes, there would usually be a
21 presentation that would be presented to the
22 pricing committee.

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1 Q. Does that have some name at OMP?

2 A. It would be different for every
3 brand.

4 Q. For every brand, okay. But it's not
5 like, you know, this is our price report
6 explanation form or something like that?

7 A. No.

8 Q. Okay. So there would be a pricing to
9 the presentation -- a presentation to the pricing
10 committee, right?

11 A. Yes.

12 Q. Okay. And have you seen the
13 paperwork, at least for this Levaquin price
14 setting, that went from OMP to J&J corporate?

15 A. No.

16 Q. But you presume that there's some
17 presentation or document?

18 A. I honestly don't know what goes
19 there, but I do not believe it's an actual
20 presentation.

21 Q. Just some written documentation or
22 memo or something?

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1 A. Yes.

2 Q. Let me show you what we're going to
3 mark as No. 3.

4 (Exhibit Spurr 003 for identification,
5 document Bates-numbered MDL-OMP 0004741, New
6 Product Pricing Approval Process.)

7 Q. You talked about the PGSM, which is
8 referenced on here, although there's also
9 something called the GPPC. I'm just trying to
10 understand the process here. Let me start out,
11 what's the GPPC?

12 A. It's the global pharmaceutical
13 pricing committee.

14 Q. Okay. And what's the PGSM?

15 A. I believe it's pharmaceutical
16 group -- I don't recall exactly what it stands
17 for.

18 Q. Okay. So does the GPPC need to
19 approve price changes to existing products?

20 A. In the context of what I know about
21 the U.S. -- this is a global pricing report. But
22 in the context of the U.S., I think the answer to

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1 that question for new products is yes. For
2 in-line brands it's no. Pricing changes.

3 Q. So the new 750 milligram version of
4 Levaquin, did that have to be approved by the
5 GPPC?

6 A. No.

7 Q. Who are these people -- I want to
8 talk with you about the GPPC members. Christine
9 Poon, I don't know if you said her title.

10 A. Yeah, I don't know that I have her
11 title right, but I believe she's worldwide head
12 of pharmaceuticals for Johnson & Johnson.

13 Q. David Norton?

14 A. David Norton today in his assignment
15 is -- he just changed jobs.

16 Q. What did he used to be?

17 A. He was group operating chairman for
18 U.S. pharmaceuticals.

19 Q. Joe Scodari, Mr. Scodari?

20 A. He's group operating chairman for
21 another group of J&J companies, that I'm not sure
22 which ones are assigned to him.

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1 Q. Dave Holveck?

2 A. I don't know Dave. Don't know Carol.

3 Don't know Rose.

4 Q. Dave Sheffield?

5 A. Dave Sheffield is a corporate finance
6 person. I don't know his title.

7 Q. Zito Sartarelli?

8 A. I don't know Zito.

9 Q. Did any of these people ever work for
10 OMP?

11 A. I don't know.

12 Q. Some of the other acronyms on this
13 page, it says -- well, first of all, the top box
14 says Health Economics. Is that some department
15 or unit?

16 A. It's a department within PGSM.

17 Q. And there is PGSM, GCT. What's a
18 GCT?

19 A. I don't know.

20 Q. Further down it talks about GOC.

21 A. Group operating chairman.

22 Q. And below that, communicates results

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1 to LOCs?

2 A. Local operating companies.

3 Q. Is OMP a local operating company?

4 A. Yes.

5 Q. Okay. And it's part of several
6 different groups, right?

7 A. Are you asking that question in the
8 context of the previous one about the changes in
9 structure?

10 Q. I'm just trying -- before the most
11 recent change, what group was OMP a part of? Let
12 me try it that way.

13 A. I apologize. I still don't
14 understand. Group of...?

15 Q. A GOC is a group operating company?

16 A. Yes. The company's broken up -- they
17 take all of these operating companies and they
18 group them into these group operations.

19 Q. Okay. What group was OMP in before
20 the most recent change?

21 A. It was in David Norton's group.

22 Q. And what was that called?

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1 director of institutional account management? So
2 has NAMs and NADs that cover long-term care and
3 GPO, and government, Medicare and Medicaid.

4 Q. Okay.

5 A. Charlie Glass -- oh, this is '99,
6 that's why I know these people. Charlie Glass I
7 know as -- he's a business director in the
8 southeast right now, but worked in-house back in
9 1999.

10 Q. In-house, meaning at headquarters?

11 A. He worked in a job in what was the
12 national accounts group back then. The exact job
13 description I don't recall. And the only reason
14 I know that is I interviewed Charlie for a job
15 and he spoke to me that he had worked with my
16 predecessor on some project with national
17 accounts.

18 Q. By the way, who was your predecessor?

19 A. Dale Russell.

20 Q. Keep going.

21 A. Robert or Bob Inserra. Bob Inserra
22 worked in managed health care finance, with

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1 Tim -- Kim Timko, T-i-m-k-o. And now Robert
2 works for HCS in a Medicaid position.

3 Sarah Kennedy is a field sales
4 director in primary care. She oversees a field
5 force in primary care. At this time I believe
6 that she was a director of national accounts in
7 the national accounts group.

8 I don't know K. Richter.

9 Dale Russell was my predecessor.

10 I don't know J. Strahan.

11 Kim Timko we spoke about. She works
12 in managed health care finance.

13 And I don't know the last two, Weidle
14 and Vitari.

15 Q. Okay. I'm going to go back to the
16 deposition notice and talk about No. 7.

17 Documents describing the method by which you
18 calculate or determine the average sales price,
19 including any determination or rendering of
20 actual transaction costs and/or revenues at any
21 level of distribution or processing chains.

22 We talked about already that average

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1 sales price is not a term you use except for a
2 couple of drugs in the Medicare context, right?

3 A. Yes.

4 Q. But you do have a calculation of
5 gross-to-net, right?

6 A. Yes.

7 Q. Is there some document that tells us
8 what's included or not included in that
9 calculation, or some policy?

10 A. There's no policy. There would be
11 documents, either part of the brand plan or part
12 of a finance document, that Steve Barrihtaris may
13 have, or a gentleman by the name of Tim Hillman,
14 who works with Steve, who is our marketing
15 controller, that would show everything that goes
16 into that calculation of gross-to-net.

17 Q. Is that gross-to-net calculation a
18 J&J-wide calculation? Meaning do the other
19 operating companies use the same formula or
20 calculation?

21 A. I don't know.

22 Q. The documents talking about the

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1 determining actual transition costs at any level
2 of the distribution or processing chain. And the
3 only level I'm interested in here is the PBM
4 level, I guess. Because you have no
5 direct-to-physician level, right?

6 A. No.

7 Q. Okay. And I think you talked earlier
8 that there's no regular report that talks about
9 that gross-to-net calculation just for PBMs,
10 right?

11 A. No.

12 Q. Okay. Although we might be able to
13 find that in the business plan somewhere?

14 A. You may.

15 Q. And on your dashboard report?

16 A. Probably on my dashboard report.

17 Q. But if I wanted to do it, I would --
18 is there a calculation by customer that exists
19 somewhere that I could then add up?

20 A. You're looking for the gross-to-net
21 calculation and trying to do that by customer?

22 Q. Well, I'm trying to do the

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1 gross-to-net calculation for your PBM business.

2 And I'm trying to --

3 A. It doesn't exist in a report.

4 Someone would have to do that for you.

5 Q. But it could be done by going to all
6 of the PBM customers, correct?

7 A. Yes.

8 Q. Do you know of another easier way to
9 do it?

10 A. No. I wish I did. Unfortunately I
11 don't.

12 Q. Other than for the entire drug
13 gross-to-net, is it broken down -- any other
14 groups of gross-to-net? Do you understand what
15 I'm asking?

16 A. So besides the drug, the category as
17 well?

18 Q. Or anything else. There's a
19 calculation of gross-to-net for -- by drug,
20 right?

21 A. Yes.

22 Q. Okay. Is there a subgroup of that

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1 drug -- of that calculation, meaning by drug, in
2 some distribution channel or some other
3 breakdown?

4 A. No. Only for some products, they
5 might break it down based on IV or oral, or drugs
6 not on the list. There might be another reason
7 to break it down.

8 Q. No. 8 talks about documents which
9 would report, review, comment or analyze the
10 profit from any of your drugs. We saw somewhere
11 on here gross margin, I think.

12 A. Right. That was in those contract
13 proposal.

14 Q. Other than that template, then,
15 for -- well, I don't know if template's the right
16 word. Model, right?

17 A. Yes.

18 Q. Is gross profit or gross margin
19 reported regularly on any financial statements?

20 A. It is by finance, in some reports
21 that they create.

22 Q. Okay. That you get on occasion?